

Bills Introduced December 6, 2010 in the 2011-12 First Extraordinary Session

ABX 3 (Logue) – Regulations: 5-year review and report

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies.

This bill would additionally require a state agency to review and report on regulations that it adopts or amends on and after January 1, 2012, 5 years after adoption, as specified. This bill would require that the review and report include 10 specified factors, including a summary of the written criticisms of the regulations received by the agency within the immediately preceding 5 years and the estimated economic, small business, and consumer impact of the regulation. The bill would require the Office of Administrative Law to make the review and report available on the office's Internet Web site.

ABX 4 (Logue) – Regulations: effective date

The Administrative Procedures Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Under existing law, a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, except as provided.

This bill would require that a regulation or an order of repeal of a regulation become effective, instead, on January 1 next following a 90-day period after the date it is filed with the Secretary of State, except as provided.

ABX 5 (Logue) – Regulations: legislative notice

Existing law requires that an agency mail a notice of proposed action to specified entities at least 45 days prior to the adoption, amendment, or repeal of a regulation.

This bill would require that the notice of proposed action also be submitted to the Legislature if it includes particular information relating to economic and cost impacts of the regulation on businesses and private parties.

ABX 6 (Logue) – Regulations: economic impacts review

Existing law requires the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual that prescribe the methods that any agency shall use in making certain determinations relating to the impact of proposed regulations. Existing law also authorizes the department to review any estimate prepared pursuant to these provisions for content.

This bill would additionally require the department to adopt and update instructions for inclusion in the State Administrative Manual that prescribe the methods that any agency shall use in making certain determinations, estimates, statements, and findings relating to the economic and cost impacts of a regulation on businesses and private individuals. This bill would require, instead of authorize, the department to review these determinations, estimates, and findings for content. This bill would require the department, if it determines that an agency's determinations, estimates, statements, or findings are erroneous or otherwise inconsistent with the prescribed guidelines, criteria, or formats, to submit its determinations to the agency in the form of public comment to be considered by the agency, as specified.

ASSEMBLY BILL

No. 3

Introduced by Assembly Member Logue

December 6, 2010

An act to add Section 11349.95 to the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 3, as introduced, Logue. Regulations: 5-year review and report.

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies.

This bill would additionally require a state agency to review and report on regulations that it adopts or amends on and after January 1, 2012, 5 years after adoption, as specified. The bill would require that the review and report include 10 specified factors, including a summary of the written criticisms of the regulation received by the agency within the immediately preceding 5 years and the estimated economic, small business, and consumer impact of the regulation. The bill would require the Office of Administrative Law to make the review and report available on the office's Internet Web site.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 6, 2010, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11349.95 is added to the Government
2 Code, to read:
3 11349.95. (a) (1) A state agency shall review and report on
4 all regulations that it adopts or amends on and after January 1,
5 2012, as required by this section. The review and report shall be
6 completed and submitted to the office on or before May 1
7 immediately following five years after the date the regulation was
8 adopted or amended.
9 (2) The office shall make the report required by paragraph (1)
10 available on the office's Internet Web site.
11 (b) The review and report required by this section shall include
12 all of the following factors:
13 (1) The general and specific statutes authorizing the regulation.
14 (2) The objective of the regulation.
15 (3) The effectiveness of the regulation in achieving the objective.
16 (4) The consistency of the regulation with state and federal
17 statutes and regulations and a listing of the statutes or regulations
18 used in determining the consistency.
19 (5) The agency enforcement policy, including whether the
20 regulation is currently being enforced and, if so, whether there are
21 any problems with enforcement.
22 (6) The agency view regarding current wisdom of the regulation.
23 (7) The clarity, conciseness, and understandability of the
24 regulation.
25 (8) A summary of the written criticisms of the regulation
26 received by the agency within the five years immediately preceding
27 the five-year review report, including letters, memoranda, reports,
28 and written allegations made in litigation or administrative
29 proceedings, to which the agency was a party, that the regulation
30 is discriminatory, unfair, unclear, inconsistent with statute, or
31 beyond the authority of the agency to enact, and the result of the
32 litigation or administrative proceedings.
33 (9) The estimated economic, small business, and consumer
34 impact of the regulation as compared to the economic, small
35 business, and consumer impact statement prepared on the last

1 making of the regulation, or, if no economic, small business, and
2 consumer impact statement was prepared on the last making of
3 the rule, an assessment of the actual economic, small business,
4 and consumer impact of the regulation.

5 (10) Course of action the agency proposes to take regarding
6 each regulation, including the month and year in which the agency
7 anticipates submitting the rules to the office if the agency
8 determines it is necessary to amend or repeal an existing rule, or
9 to make a new rule.

10 SEC. 2. This act addresses the fiscal emergency declared by
11 the Governor by proclamation on December 6, 2010, pursuant to
12 subdivision (f) of Section 10 of Article IV of the California
13 Constitution.

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ASSEMBLY BILL

No. 4

Introduced by Assembly Member Logue

December 6, 2010

An act to amend Section 11343.4 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 4, as introduced, Logue. Regulations: effective date.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Under existing law, a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, except as provided.

This bill would require that a regulation or an order of repeal of a regulation become effective, instead, on January 1 next following a 90-day period after the date it is filed with the Secretary of State, except as provided.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 6, 2010, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11343.4 of the Government Code is
2 amended to read:

3 11343.4. A regulation or an order of repeal required to be filed
4 with the Secretary of State shall become effective on ~~the 30th day~~
5 *January 1 next following a 90-day period* after the date of filing
6 unless:

7 (a) Otherwise specifically provided by the statute pursuant to
8 which the regulation or order of repeal was adopted, in which event
9 it becomes effective on the day prescribed by the statute.

10 (b) A later date is prescribed by the state agency in a written
11 instrument filed with, or as part of, the regulation or order of repeal.

12 (c) The agency makes a written request to the office
13 demonstrating good cause for an earlier effective date, in which
14 case the office may prescribe an earlier date.

15 SEC. 2. This act addresses the fiscal emergency declared by
16 the Governor by proclamation on December 6, 2010, pursuant to
17 subdivision (f) of Section 10 of Article IV of the California
18 Constitution.

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ASSEMBLY BILL

No. 5

Introduced by Assembly Member Logue

December 6, 2010

An act to amend Section 11346.4 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as introduced, Logue. Regulations: legislative notice.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires that an agency mail a notice of proposed action to specified entities at least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation.

This bill would require that the notice of proposed action also be submitted to the Legislature if it includes particular information relating to economic and cost impacts of the regulation on businesses and private persons.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 6, 2010, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11346.4 of the Government Code is
2 amended to read:

3 11346.4. (a) At least 45 days prior to the hearing and close of
4 the public comment period on the adoption, amendment, or repeal
5 of a regulation, notice of the proposed action shall be:

6 (1) Mailed to every person who has filed a request for notice of
7 regulatory actions with the state agency. Each state agency shall
8 give a person filing a request for notice of regulatory actions the
9 option of being notified of all proposed regulatory actions or being
10 notified of regulatory actions concerning one or more particular
11 programs of the state agency.

12 (2) In cases in which the state agency is within a state
13 department, mailed or delivered to the director of the department.

14 (3) Mailed to a representative number of small business
15 enterprises or their representatives that are likely to be affected by
16 the proposed action. "Representative" for the purposes of this
17 paragraph includes, but is not limited to, a trade association,
18 industry association, professional association, or any other business
19 group or association of any kind that represents a business
20 enterprise or employees of a business enterprise.

21 (4) When appropriate in the judgment of the state agency, mailed
22 to any person or group of persons whom the agency believes to
23 be interested in the proposed action and published in the form and
24 manner as the state agency shall prescribe.

25 (5) Published in the California Regulatory Notice Register as
26 prepared by the office for each state agency's notice of regulatory
27 action.

28 (6) Posted on the state agency's ~~website~~ *Internet Web site* if the
29 agency has ~~a website~~ *an Internet Web site*.

30 (7) *Submitted to the Legislature, in the manner prescribed by*
31 *Section 9795, if the notice of proposed action includes an economic*
32 *impact, cost impact, statement, or finding described by paragraph*
33 *(7), (9), (10), or (11) of subdivision (a) of Section 11346.5.*

34 (b) The effective period of a notice issued pursuant to this
35 section shall not exceed one year from the date thereof. If the

1 adoption, amendment, or repeal of a regulation proposed in the
2 notice is not completed and transmitted to the office within the
3 period of one year, a notice of the proposed action shall again be
4 issued pursuant to this article.

5 (c) Once the adoption, amendment, or repeal is completed and
6 approved by the office, no further adoption, amendment, or repeal
7 to the noticed regulation shall be made without subsequent notice
8 being given.

9 (d) The office may refuse to publish a notice submitted to it if
10 the agency has failed to comply with this article.

11 (e) The office shall make the California Regulatory Notice
12 Register available to the public and state agencies at a nominal
13 cost that is consistent with a policy of encouraging the widest
14 possible notice distribution to interested persons.

15 (f) Where the form or manner of notice is prescribed by statute
16 in any particular case, in addition to filing and mailing notice as
17 required by this section, the notice shall be published, posted,
18 mailed, filed, or otherwise publicized as prescribed by that statute.
19 The failure to mail notice to any person as provided in this section
20 shall not invalidate any action taken by a state agency pursuant to
21 this article.

22 SEC. 2. This act addresses the fiscal emergency declared by
23 the Governor by proclamation on December 6, 2010, pursuant to
24 subdivision (f) of Section 10 of Article IV of the California
25 Constitution.

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ASSEMBLY BILL

No. 6

Introduced by Assembly Member Logue

December 6, 2010

An act to amend Section 11357 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 6, as introduced, Logue. Regulations: economic impacts review.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual that prescribe the methods that any agency shall use in making certain determinations relating to the impact of proposed regulations. Existing law also authorizes the department to review any estimate prepared pursuant to these provisions for content.

This bill would additionally require the department to adopt and update instructions for inclusion in the State Administrative Manual that prescribe the methods that any agency shall use in making certain determinations, estimates, statements, and findings relating to the economic and cost impacts of a regulation on businesses and private individuals. The bill would require, instead of authorize, the department to review these determinations, estimates, statements, and findings for content. This bill would require the department, if it determines that an agency's determinations, estimates, statements, or findings are erroneous or otherwise inconsistent with the prescribed guidelines, criteria, or

formats, to submit its determinations to the agency in the form of public comment to be considered by the agency, as specified.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 6, 2010, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11357 of the Government Code is
- 2 amended to read:
- 3 11357. (a) The Department of Finance shall adopt and update,
- 4 as necessary, instructions for inclusion in the State Administrative
- 5 Manual prescribing the methods that any agency subject to this
- 6 chapter shall use in making the ~~determination required by~~
- 7 ~~paragraph (5) and the estimate required by paragraph (6)~~
- 8 *determinations, estimates, statements, and findings described by*
- 9 *paragraphs (5) to (11), inclusive, of subdivision (a) of Section*
- 10 *11346.5. The instructions shall include, but need not be limited*
- 11 *to, the following:*
- 12 (1) Guidelines governing the types of data or assumptions, or
- 13 both, that may be used, and the methods that shall be used, to
- 14 calculate the estimate of the cost or savings to public agencies
- 15 mandated by the regulation for which the estimate is being
- 16 prepared.
- 17 (2) The types of direct or indirect costs and savings that should
- 18 be taken into account in preparing the estimate.
- 19 (3) The criteria that shall be used in determining whether the
- 20 cost of a regulation must be funded by the state pursuant to Section
- 21 6 of Article XIII B of the California Constitution and Part 7
- 22 (commencing with Section 17500) of Division 4.
- 23 (4) The format the agency preparing the estimate shall follow
- 24 in summarizing and reporting its estimate of the cost or savings

1 to state and local agencies, school districts, and in federal funding
2 of state programs that will result from the regulation.

3 (5) *The format and criteria that the agency shall use in making*
4 *an initial determination that a regulation either may have or will*
5 *not have a significant, statewide adverse economic impact directly*
6 *affecting business, consistent with the requirements of subdivision*
7 *(a) of Section 11346.3, and including the corresponding*
8 *information required pursuant to paragraphs (7) and (8) of*
9 *subdivision (a) of Section 11346.5.*

10 (6) *The criteria the agency shall consider in determining and*
11 *describing cost impacts that a representative private person or*
12 *business would necessarily incur in reasonable compliance with*
13 *a proposed regulation.*

14 (7) *The format and criteria that the agency shall use in assessing*
15 *and stating the impact of a regulation on the creation or*
16 *elimination of jobs, the creation of new businesses, the elimination*
17 *of existing businesses, and the expansion of businesses in this state,*
18 *consistent with the requirements of subdivision (b) of Section*
19 *11346.3.*

20 (8) *The format and criteria that the agency shall use in making*
21 *a finding that a regulation that imposes a reporting requirement*
22 *applicable to businesses is necessary for the health, safety, or*
23 *welfare of the people of the state, consistent with the requirements*
24 *of subdivision (c) of Section 11346.3.*

25 (b) Any action by the Department of Finance to adopt and
26 update, as necessary, instructions to any state or local agency for
27 the preparation, development, or administration of the state budget,
28 including any instructions included in the State Administrative
29 Manual, shall be exempt from this chapter.

30 (c) The Department of Finance ~~may~~ shall review any ~~estimate~~
31 *determination, estimate, statement, or finding* prepared pursuant
32 to this section for content including, but not limited to, the data
33 and assumptions used in its preparation.

34 (d) *If the department determines that any determination,*
35 *estimate, statement, or finding described by paragraphs (5) to*
36 *(11), inclusive, of subdivision (a) of Section 11346.5 is erroneous*
37 *or otherwise inconsistent with the guidelines, criteria, or format*
38 *required by this section, the Department of Finance shall submit*
39 *its determinations, along with any supporting documents, to the*

1 *agency in the form of public comment for consideration by the*
2 *agency prior to the close of the public comment period.*
3 SEC. 2. This act addresses the fiscal emergency declared by
4 the Governor by proclamation on December 6, 2010, pursuant to
5 subdivision (f) of Section 10 of Article IV of the California
6 Constitution.

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